IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 712 OF 1997

Sau.Sakhubai @ Shakuntala Hindurao
Pawar and others. ... Appellants.

Versus.

Sau.Drupada Sakharam Chavan & ors. ... Respondents.

Shri Rajiv L.Patil for the Appellants.

Shri S.B.Deshmukh i/by Shri A.V.Anturkar for the Respondent No.1.

CORAM : ABHAY S. OKA, J.

DATED : 3rd February, 2005.

P.C.:

1. This Second Appeal is preferred by the unsuccessful Plaintiffs. The contention of the Appellants/Plaintiffs is that the decree passed in the Regular Civil Suit No.383 of 1982 filed by the Respondent No.1 is illegal and not binding on the Appellants. The case is that in the said suit the Appellant No.5 was appointed as guardian of Appellant Nos.1, 2 and 3 who were minors at the relevant time and the Appellant No.5 acting as guardian failed to file Written Statement for resisting the suit and therefore, exparte decree came to be passed.

2. Reliance is placed on Order XXXII Rule 3A of the Code of Civil Procedure, 1908. It is pertinent to note here that the guardian of the minor appointed in the earlier suit is herself one of the Plaintiffs, viz.

Plaintiff No.5 in the suit. Therefore, the Appellants Nos.1 to 3 cannot claim that the Appellant No.5 had any adverse interest. When the guardian herself is one of the Plaintiffs, allegation of negligence cannot be obviously made thereby bringing the case within the purview of Sub-Rule (2) of Rule 3A of order XXXII of the said Code.

3. In the circumstances, the suit filed by the Appellants in so far as declaration is concerned has been rightly dismissed by the Court below. No substantial question of law arises. The Second Appeal is dismissed with no order as to costs.

Judge.